

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6005 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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PARBHUBHAI DHANABHAI AHIR

Versus

STATE OF GUJARAT

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Appearance:

M/S THAKKAR ASSOC. for Petitioner  
MR.TS SOMPURA, AGP for Respondent No. 1

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CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 17/01/97

ORAL JUDGEMENT

The petitioner before me had filled-up Form No.I under Section 6(1) of the Urban Land (Ceiling and Regulation) Act, 1976, before the Competent Authority and had shown the holding of the lands bearing Survey Nos.1, 2/1 and 2/2 situated at village Dhumbhal, under the Choryasi Taluka of the District of Surat, which would be

within the urban agglomeration of Surat. It was the case of the petitioner that the above said lands were the properties of the Hindu Undivided Family. The Competent Authority had passed the necessary orders on October 30, 1990, declaring a total area of 3552.86 sq.mtrs. of land as the excess vacant land. The Competent Authority had granted deductions in respect of the two constructions, namely, Kodharu and the Godown. The Competent Authority had come to the conclusion that the total area of the above said Survey Numbers would be 9552.86 sq.mtrs. From the above said area, the Competent Authority had granted the deduction of 4005 sq.mtrs. of land, on the ground that they would be the lands of the Khadi (Creek), Khadi Margin (Creek Margin) Kodharu, land appurtenant to the well etc. Under these orders, therefore, the Competent Authority had come to the conclusion that the land admeasuring 3552.86 sq.mtrs. would be the excess vacant land. These orders passed by the Competent Authority on October 30, 1990 were taken in revision by the respondent no.1. Upon hearing the revision, the Deputy Secretary (Appeals), Revenue Department, State of Gujarat, had taken the view that, the deductions in respect of Kodharu and the Godown were not justifiable. It is not in dispute that the area for the Kodharu would be 215.25 sq.mtrs., while the area for the construction of the Godown would be 503.25 sq.mtrs. The Appellate Authority had taken the view that the revenue record including the Form No.7/12, the report submitted by the District Inspector of Land Records and the report submitted by the Maintenance Surveyor would go to show that, in fact, Kodharu and the Godown were existing on the land. Any how, the deduction was declined on the ground that, there was absolutely no material to warrant a conclusion that the said constructions, namely, Kodharu and the Godown were the authorised constructions. This view has resulted into taking away the deduction in respect of Kodharu and the Godown recognised and granted by the Competent Authority. These orders are in challenge before me in the present petition.

Learned Counsel Mr. Pahwa appearing on behalf of the petitioner urges that, so far as the Kodharu is concerned, the legal as well as the factual position is abundantly clear. The learned Counsel points out from the orders that, there is no dispute that the Kodharu is on the land and that in the same way, there is no dispute regarding the area occupied by Kodharu. The learned Counsel appears to be factually correct. The orders go to show the existence of the Kodharu and the area covered underneath, which would be 215.25 sq.mtrs. After having established the fact situation, the learned Counsel draws

my attention to the definition of "vacant land" given under Section 2(q) of the Act of 1976 and reads the proviso annexed to the same with great emphasis. The proviso reads as under:

"2(q) "vacant land" means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration but does not include-

xxx     xxx     xxx

Provided that where any person ordinarily keeps his cattle, other than for the purpose of dairy farming or for the purpose of breeding of live-stock, on any land situated in a village within an urban agglomeration (described as a village in the revenue records) then, so much extent of the land as has been ordinarily used for the keeping of such cattle immediately before the appointed day shall not be deemed to be vacant land for the purposes of this clause."

A reference to the phraseology under the proviso would go to show that, where any person ordinarily keeps his cattle other than for the purpose of dairy farming or for the breeding of the livestock on any lands situated in a village within the urban agglomeration, that much extent of the land requires to be deducted because the said land cannot be deemed to be vacant land for the purpose of the clause under the Act. This proviso, therefore, makes it abundantly clear that, if Kodharu was being utilised for the purpose of keeping the cattle and that the purpose of keeping the cattle was not for dairy farming or for the breeding of livestock and the same use is there immediately before the appointed day, such area can never be said to be a vacant land. Therefore, it appears that, the Appellate Authority was not justified in declining the area of Kodharu which was already granted by the orders of the Competent Authority. In other words, the area beneath Kodharu, namely, 215.25 sq.mtrs. cannot be said to be the excess vacant land. Therefore, the petition qua the Kodharu succeeds and is allowed. Rule is made absolute in this respect.

There is some debate regarding the Godown construction. The orders under challenge, once again, would go to show that, under the revenue record, the existence of the Godown is borne out. The deduction of the underneath area has not been recognised on the ground that there was no evidence to warrant the conclusion that the construction of the said Godown was an authorised

one. It appears that, the revenue records do show the existence of the Godown. The case of the petitioner, already recognised by the Competent Authority, is being rejected by the Appellate Authority on the ground that the necessary evidence regarding the authorised construction was not coming forth. Learned Counsel Mr. Pahwa urges that the authorisation would be required only if, at the relevant time, under some Rules or Regulations the permission or the authorisation for the construction of a Godown on the agricultural lands was required. I have no opinion of my own to express on this contention being raised by the learned Counsel for the petitioner because, in my view, the matter requires a remittance to the Competent Authority to decide this question on merits and according to law.

Therefore, though the case of the petitioner for the Kodharu is being recognised by me, I order the remittance of the matter to the Competent Authority for examining the question regarding the land beneath the Godown. All the contentions which the learned Counsel for the petitioner and the learned Govt. Counsel wanted to urge before me in the petition shall be open for them and they, if raised, should be decided by the Competent Authority according to law and on merits. Rule is made absolute to the above said extent only so far as Godown is concerned.

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